IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 193 of 1981

with

CIVIL APPLICATION No 781 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TAPUBHAI L KARBARIA

Versus

DAMJIBHAI KHIMJIBHAI GEDIYA

Appearance:

1. First Appeal No.193 of 1981
   MR SURESH M SHAH for Appellant
   MR JD AJMERA for Respondent No. 1
2. Civil Application No.781 of 1981
   MR SURESH M SHAH for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 23/10/2002

ORAL JUDGEMENT

1. This appeal by the original defendant is directed against the judgment and decree dated 29th November, 1980 passed by the learned Civil Judge (S.D.), Amreli in Civil Suit No.33 of 1977. The learned Judge decreed the said suit for Rs.17,001/- against the appellant.

2. The respondent is the original plaintiff. According to him, the defendant had entered into an agreement to sell the truck No.G.T.D. 4212 to him for Rs.64,501/-, that the parties had executed an agreement dated 16th December, 1976 and that he had paid Rs.15,501/- by way of earnest money, that the defendant had agreed to arrange for Rs.30,000/- by way of HP from the finance company, that the plaintiff had paid Rs.2,000/- on 19th January, 1977 to the defendant and had paid Rs.1,500/- in R.T.O. on behalf of the defendant, that the defendant had failed to act according to the agreement and he had forcibly taken possession of the truck from him. The plaintiff also alleged that he had carried out repairs in the truck. He claimed that he was entitled to get back from the defendant, the amount of Rs.15,501/- and Rs.3,500/- paid to the defendant. The plaintiff, therefore, filed the suit to recover Rs.19.001/- from the defendant with interest.

3. The appellant resisted the suit by filing his written statement. He denied the various allegations made against him in the plaint. He gave his version of the transaction in the written statement. According to him, the plaintiff had voluntarily handed over the possession of the truck to him. He claimed to be entitled to forfeit the amount of earnest money. He also alleged that he himself had suffered the loss of Rs.12,492/-.

4. The learned Trial Judge raised the necessary issues arising from the pleadings of the parties. He recorded the oral and documentary evidence led by the parties. He found that the defendant had entered into an agreement to sell the truck to the plaintiff for Rs.64,501/-, that both the plaintiff and the defendant had executed an agreement dated 16th December, 1976 and that the plaintiff had paid Rs.15,501/- as earnest money and that the defendant had agreed to arrange for Rs.30,000/- by way of HP from the finance company. As against the plaintiff's claim that he had paid Rs.2,000 on 19th January, 1977 to the defendant and had paid

Rs.1,000/- in the RTO, in all Rs.3,500/-, the learned Judge found that the plaintiff had paid only Rs.1,500 in R.T.O. He rejected the defence of the defendant that he was entitled to forfeit the amount of earnest money and that he had suffered the loss of Rs.12,492/-. The learned Judge, therefore, passed the decree for the amount of Rs.17,001/- in favour of the respondent and against the appellant.

5. The appellant has, therefore, filed this appeal challenging the said judgment and decree.

6. The learned counsel for the appellant took me through the judgment and the evidence on record. He submitted that the findings recorded by the learned Trial Judge against the appellant were erroneous and not supported by the pleadings.

7. The learned Trial Judge has elaborately discussed the evidence led by the parties. Five witnesses were examined on behalf of the plaintiff including the plaintiff himself. The defendant himself gave evidence but did not call any other witness. The learned Judge who had the opportunity to see the demeanour of witnesses preferred the oral evidence of the plaintiff and his witnesses and observed that their evidence fully supported the plaintiff's case. It is not shown how the findings recorded by the learned Judge are, in any way, erroneous. There is no substance in the appeal and the same is dismissed.

8. The appellant had also filed Civil Application No.781 of 1981 for additional evidence. No case is made out for additional evidence and hence, the same is dismissed.

9. Cross-objections filed by the respondent too are dismissed. No order as to costs.

(M.C. Patel, J.)

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